



*DAR*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

PAPER:

Inventor : Mitchell R. Swartz  
Serial.no. 09/ 750, 480

Group Art Unit:3641  
Examiner: R. Palabrica

Filed: 12/28/00

For: **METHOD AND APPARATUS  
TO MONITOR LOADING  
USING VIBRATION**

This is a continuation of Serial no. 07/371,937  
Filed: 06/27/89

The Commissioner of Patents and Trademarks  
P.O. Box 1450, Alexandria, VA 22313-1450

April 5, 2005

**PETITION TO THE COMMISSIONER  
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct a wrongful situation involving a Second "Final" [Exhibit "A" attached, hereinafter "second Final"], dated 1/11/05. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below, and the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated April 5, 2002.

**BEST AVAILABLE COPY**

3. Dr. Swartz, the applicant, now Appellant, already has filed a Notice of Appeal (Exhibit "B"). Dr. Swartz already paid the Board of Patent Appeals AND the checks were cashed (Exhibits "C" and "D").

4. Appeal Briefs in triplicate were submitted (Exhibit "E").

5. There was previously the appearance that unlike previous Examiners, the present Examiner and his Supervisors refused to allow the Appellant his Constitutionally-protected rights of due process, including Appeal (Exhibit "F").

6. There is now presently the continued appearance that unlike previous Examiners, the present Examiner and his Supervisors refuse to allow the Appellant his Constitutionally-protected rights of due process, including Appeal. In this case, a new second-'Final' was written by the Examiner that should have been a response to the Appeal Brief. But there has been no response to the Appeal Brief.

7. Simply put, Appellant has not given up his right to Appeal. Appellant did never agree to this violation of due process.

8. Furthermore, this last action of the Examiner has been made to confuse the record and make it impossible for the Appellant to refer to the record since there would now be two "finals" - and two responses to said finals. The Board will never have a clean, unambiguous, record in this case which to refer in this case.

9. Therefore, this present action by the Examiner has violated Appellant's civil rights because said Notice was given (Exhibit "B"), Appeal Briefs in triplicate were submitted (Exhibit "E"), Notices of Compliance was submitted (Exhibit "F"), and the checks were cashed by the Office (Exhibits "C" and "D").

10. In this light, the Commissioner should consider the following. Consistent with these cited improper actions (present 'second Final' and confer Exhibit "F"), there has been no response from the Examiner to any of the Appellant's other several Appeal Briefs or the Remand from the Board. Instead, despite the United States at War, the Examiner and his Supervisor have responded attacking the Appellant (then Applicant), crushing his applications and Appeals, and have systematically keep said Appeals from the Board.

11. Supporting the above-cited present improper action, the Appellant notes there has been a history of dirty tricks in the above-entitled application. As but one example, in the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated October 23, 2002. As discussed in the Swartz Declaration of October 23, 2002, Applicant received a "Notice Of Abandonment" dated 9/9/02. Said communication is a Notice which states that the application has been "*Abandoned*". There was a major error in said communication from the Office.

As stated in the Swartz Declaration,

**"This Applicant has NEVER abandoned this patent application. No communication to the Office from the Applicant has ever used the word "abandonment". "**

**"I submitted a Response to the Office's Action which was dated 1/16/02 and was unsigned and unnumbered."**

**"The datestamp of the Patent and Trademark Office indicates that the pleading with said Exhibits was received and docketed 3/1/02."**

**"Also submitted with the Response was a Petition to the Commissioner under 1.181, accompanied by a supporting Declaration. These additional important pleadings were received at the Patent and Trademark Office as proven by the Office's datestamp."**

**The datestamp of the Patent and Trademark Office heralds receipt of Applicant's Response to the Office's Action dated 1/16/02, which was unsigned and unnumbered, and this indelibly demonstrates that there was no abandonment."**

The date-stamp of the Office **proves that there was no abandonment.**

12. Supporting the above-cited present improper action, the Appellant submits Exhibit "F" which demonstrates that there has been a history of improper action by the Office.

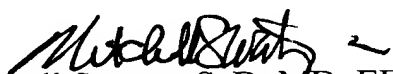
13. Supporting the above-cited present improper action, the Appellant submits Exhibit "G" which is palpable evidence which explicitly demonstrates that the Office has not been fair, but has engaged in a two-tier system involving conspiracy outlined in said Exhibit "G" which was used to deprive the Applicant of his civil rights since June 5, 1989. The Office has previously denied the existence of Exhibit "G" which now demonstrates the pattern of attack against the applicant (now Appellant). The Applicant/Appellant preserves all rights to pursue in Court redress for said violations, including conspiracy if this continues, in the prism of Exhibit "G".

14. The Appellant preserves his right to seek any and all redress and judicial forums to protect his Constitutionally-protected rights which have been eroded by the Office, the Examiners, their Supervisors, and others, including based upon Exhibit "G" that have resulted in a series of what now appear to be "dirty tricks" and ad hominem directed against the Applicant and his Declarants over sixteen (16) years.

WHEREFORE, with this Petition supported by Affidavit, the Applicant respectfully requests relief from the latest improper actions of the Examiner and his Supervisor. They have refused to respond to Applicant's arguments. They have refused to respond to Applicant's Declarants. They have clouded the record with two 'finals'. It is impossible for the Applicant to respond to two different Finals and a pattern which is not consistent with Office rules by the Examiner. Therefore, to clean the record and make it clear, Appellant is now forced to file a Continuation. The Appellant hereby requests that, first, the Office refund Appellant's costs for the wasted Appeal to the Board. This amount is \$20,000.00

Furthermore, the Appellant hereby requests that given Exhibit "G", that the Office and the Commissioner immediately act to move this action to different Group Art and to recuse the Examiner and his Supervisors hereinafter from all of Appellant's applications. Attention of the Court is directed to the fact that failure to correct this in the light of said Exhibit "G" would reasonably be interpreted as an admission by the Office that said policy denying rights to Applicant and denying energy and inventions to America as itemized in said Exhibit "G" not only continues, but continues with the willful and explicit approval of both the Commissioner and the Office.

Respectfully submitted,

  
 Mitchell Swartz, ScD, MD, EE  
 Post Office Box 81135  
 Wellesley Hills, Mass. 02481

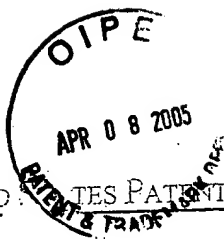
### **Certificate Of Mailing [37 CFR 1.8(a)]**

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

The Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450 on the date below.  
 April 5, 2005

  
 M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,430	12/23/2000	Mitchell R. Swartz		7970
7590	01/11/2005			
Mitchell R. Swartz, ScD, EE, MD 16 Pembroke Road Weston, MA 02493				
			EXAMINER PALABRICA, RICARDO J	
			ART UNIT 3641	PAPER NUMBER

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"

BEST AVAILABLE COPY



RESPONSE UNDER 37 CFR 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 3641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

Filed: 12/28/00

For: METHOD AND APPARATUS  
TO MONITOR LOADING  
USING VIBRATION

This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

PAPER:

Group Art Unit: 3641

Examiner: R. Palabrica

May 9, 2004

EXHIBIT

"B"

Commissioner of Patents and Trademarks  
P.O.Box 1450 Alexandria, VA 22313-1450

To Whom it Does Concern:

## NOTICE OF APPEAL

1. The Applicant hereby files a notice of appeal to the United States Patent Office Board of Appeals and Patent Interferences from the Examiner's final action: a Final Rejection of the above-entitled application, which was mailed on January 14, 2004 (Exhibit "A", copy is attached hereto). Applicant responded timely in less than two months. The Office has not responded to either the response or the the



MITCHELL R. SWARTZ  
16 PEMBROKE RD.  
WESTON, MA 02493

5-13/110  
9470151453

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DATE 5/9/14

PAY TO THE ORDER OF Comm of Patents & Trademarks \$ 165.00

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Wellesley, Massachusetts 02491

MEMO 480-07 April

⑆0110001381⑆ 94701 51453⑈ 0288

MITCHELL R. SWARTZ  
16 PEMBROKE RD.  
WESTON, MA 02493

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DATE 5/9/14

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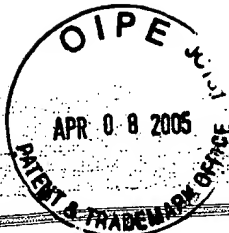
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MEMO 480-07

⑆0110001381⑆ 94701 51453⑈ 0290

Exhibit "C"





MITCHELL R. SWARTZ  
16 PEMBROKE RD.  
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DATE 7/2/04

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MEMO 480 Appeal pt 2 Mitchell Swartz

480110001381 94701 51453 0377

EXHIBIT  
"D"

The date stamp of the Board Of Patent Appeals on this postcard will indicate receipt of:

- 1) Appellant's Appeal Brief (in triplicate),
- 2) containing a Certificate of Service on the last page,
- 3) Appellant's Appendix attached thereto,
- 4) Appellant's Certificate Of Mailing,
- 5) Check in the Amount of \$165.
- 6) Request for Investigation of Mr. Palabrica, and
- 7) This Self-addressed postcard for the date stamp of the Board Of Patent Appeals

Thank you. Dr. Mitchell Swartz  
Mailed July 2, 2004  
Serial no. 09/750, 480



THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

Filed: 12/28/00

For: **METHOD AND APPARATUS  
TO MONITOR LOADING  
USING VIBRATION**

This is a continuation of Serial no. 07/371,937

Filed: 06/27/89

PAPER:

Group Art Unit: 3641

Examiner: R. Palabrica

EXHIBIT

"E"

Commissioner for Patents  
Alexandria, VA 22313-1450

July 2, 2004

APPEAL BRIEF

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Examiner: R. Palabrica

EXHIBIT

"F"

Office of the Clerk  
Board Of Patent Appeals  
c/o The Commissioner for Patents  
Alexandria, VA 22313-1450

October 19, 2004

NOTICE OF COMPLIANCE BY APPELLANT

To Whom it Does Concern:

1. The Appellant received said Notice of Noncompliance, mailed September 27, 2004, regarding Appellant's Appeal Brief of the above-entitled action dated July 2, 2004 [hereinafter "Notice" or "Communication" (cover as Exhibit "A", attached)]. This is Appellant's Response and Notice of Compliance by Appellant to said Notice of Non-Compliance.

2. The Appellant respectfully notes that the evidence disputes the comments of the Office and notes that said office communication substantively ignores both the appeal and the Appellant's Appeal Brief. The Appellant will demonstrate that the evidence supports the Appellant's position and that the Appellant will



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

Memorandum

DATE June 5, 1989

TO All Group Directors

FROM Kenneth L. Cage, Director  
Group 220

SUBJECT Cold Fusion Applications

EXHIBIT  
"G"

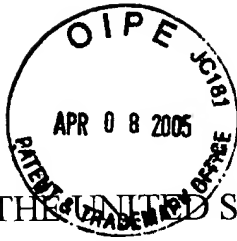
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DIRECTOR'S OFFICE  
GROUP 220

Although the media attention relating to cold fusion has diminished, we are just now beginning to see a large number of applications relating to this subject. Although we are attempting to identify all of these applications in the pre-examination screening process, there is a possibility that a few applications may slip through without being identified. Please have your examiners be on the look out for any application that may relate to cold fusion. Some of the areas where a cold fusion application might be filed are:

Fuel Cells	class 429
Electrochemistry	class 204
Power plant	class 60
Radiant energy	class 250
Helium production	class 423

If one of your examiners should receive an application relating to cold fusion, he or she should check to make sure the words "COLD FUSION" are stamped on the file wrapper. If not, the application should be referred to Licensing and Review, CP4-10C23 for marking. Also, any action on one of these applications should be routed through the Group 220 Director's Office and the Office of the Assistant Commissioner for Patents prior to mailing.

Thank you for your cooperation. Should have any questions, please contact me.



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Filed: 06/27/89

Group Art Unit:3641

Examiner: R. Palabrica

The Commissioner of Patents and Trademarks  
P.O. Box 1450, Alexandria, VA 22313-1450

April 5, 2005

**DECLARATION OF DR. MITCHELL SWARTZ  
SUPPORTING PETITION TO THE COMMISSIONER**

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. In the above-entitled application, I received a second "Final" [Exhibit "A" attached] dated 1/11/05.

2. I already filed a Notice of Appeal (Exhibit "B").

3. I already paid the Board of Patent Appeals AND the checks were cashed (Exhibits "C" and "D").

4. Appeal Briefs in triplicate were submitted by me (Exhibit "E").
5. I have never given up my right to Appeal in the above-entitled action.
6. The Examiner has refused to allow my Appeal Briefs.



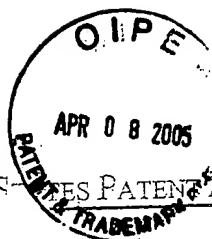
I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

April 5, 2005



Mitchell R. Swartz, ScD, MD, EE  
Post Office Box 81135  
Wellesley Hills, Mass. 02481



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,480	12/28/2000	Mitchell R. Swartz		7970

7590 01/11/2005

Mitchell R. Swartz, ScD, EE, MD  
16 Pembroke Road  
Weston, MA 02493

EXAMINER

PALABRICA, RICARDO J

ART UNIT PAPER NUMBER

3641

DATE MAILED: 01/11/2005

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EXHIBIT "A"



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PAPER:

Group Art Unit: 3641

Examiner: R. Palabrica

May 9, 2004

EXHIBIT

"B"

Commissioner of Patents and Trademarks  
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To Whom it Does Concern:

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PATENT & TRADEMARK OFFICE

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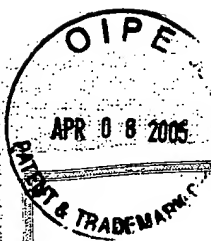
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EXHIBIT "C"



APR 08 2005

PATENT & TRADEMARK

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DATE 7/2/4

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ORDER OF

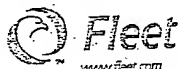
Commissioner of Patents

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480 Appeal pt 2

Mitchell Swartz

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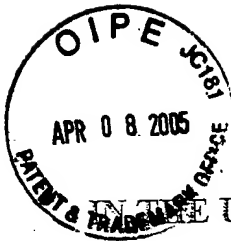
EXHIBIT

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Group Art Unit: 3641

Examiner: R. Palabrica

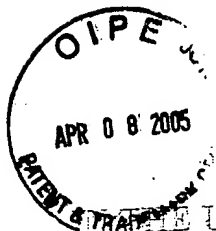
EXHIBIT  
"E"

Commissioner for Patents  
Alexandria, VA 22313-1450

July 2, 2004

APPEAL BRIEF

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Inventor : Mitchell R. Swartz

Serial no. 09/750, 480

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EXHIBIT

"F"

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Board Of Patent Appeals  
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Alexandria, VA 22313-1450

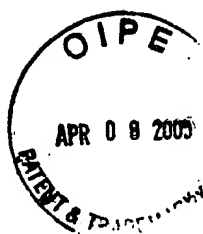
October 19, 2004

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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

Memorandum

DATE June 5, 1989

TO All Group Directors

FROM Kenneth L. Cage, Director  
Group 220

SUBJECT Cold Fusion Applications

EXHIBIT  
"G"

RECEIVED  
1989 JUN -6 PM 1:05  
DIRECTOR'S OFFICE  
GROUP 220

Although the media attention relating to cold fusion has diminished, we are just now beginning to see a large number of applications relating to this subject. Although we are attempting to identify all of these applications in the pre-examination screening process, there is a possibility that a few applications may slip through without being identified. Please have your examiners be on the look out for any application that may relate to cold fusion. Some of the areas where a cold fusion application might be filed are:

Fuel Cells	class 429
Electrochemistry	class 204
Power plant	class 60
Radiant energy	class 250
Helium production	class 423

If one of your examiners should receive an application relating to cold fusion, he or she should check to make sure the words "COLD FUSION" are stamped on the file wrapper. If not, the application should be referred to Licensing and Review, CP4-10C23 for marking. Also, any action on one of these applications should be routed through the Group 220 Director's Office and the Office of the Assistant Commissioner for Patents prior to mailing.

Thank you for your cooperation. Should have any questions, please contact me.

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